



916/324-6593

November 3, 1986

Louise H. Renne
City Attorney
City & County of San Francisco
214 Van Ness Avenue
San Francisco, CA 94102-4574

Attn: Robin Reitzes Manion
Deputy City Attorney

Dear Ms. Manion:

This is in response to your letter of October 7, 1986, in which you have requested our opinion regarding the change in ownership consequences of the termination of a joint tenancy. The facts presented in your letter can be summarized as follows:

In 1942, a mother and daughter purchased certain real property as joint tenants. In 1982, the mother died, whereupon the joint tenancy was terminated, and the decedent's 50 percent interest vested in the surviving joint tenant.

The City reappraised the 50 percent interest which was transferred to the surviving joint tenant. The taxpayer has protested the reassessment, asserting that each joint tenant was an "original transferor" and that reappraisal of the decedent's interest was therefore improper.

Section 60 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) states that:

A "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

Included within the definition of change in ownership is:

The creation, transfer or termination of any joint tenancy interest, except as provided in subdivision (f) of Section 62, Section 63 and in Section 65 (Section 61(d)).

However, Section 62(f) provides that a change in ownership shall not include:

The creation or transfer of a joint tenancy interest if the transferor, after the creation of transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

Section 63 is the interspousal exclusion and is not applicable here. Section 65, however, deals solely with joint tenancy interests and provides, in pertinent part:

(a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.

(b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers....

(c) Upon termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transfer in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants.

(e) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, shall be an "original

transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

These statutory provisions are interpreted by subdivision (c) of property tax Rule 462 which provides, in pertinent part:

(1) Except as is otherwise provided in subdivision (2), the creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

(A) Examples:

(i) The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

(ii) The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50 percent of the property.

(2) Exclusions:

(A) The transfer creates or transfers any joint tenancy interest and after such creation or transfer, the transferor(s) is one of the joint tenants.

Such transferor(s) who is also a transferee(s) in this situation is considered to be an "original transferor" for purposes of determining the property to be reappraised upon subsequent transfers. A spouse of an original transferor shall also be considered to be an original transferor. All other initial and subsequent joint tenants are considered to be "other than original transferors".

* * *

(B) The transfer terminates an original transferor's interest in a joint tenancy described in (A) and the interest vests in whole or in part in the remaining original transferor(s)....

* * *

Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the property held by all transferors.

(c)(3) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, shall be an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

These code and rule provisions provide exclusions from the change in ownership provisions for certain transfers involving "original transferors." Section 65(b) defines an "original transferor" as a transferor who creates or transfers a joint tenancy interest and who remains as one of the joint tenants after the creation or transfer of the interest. Moreover, Section 65(e) provides that for purposes of Section 65, for joint tenancies created on or before March 1, 1975, there is a rebuttable presumption that each joint tenant having an interest in property as of March 1, 1975, is an "original transferor."

A rebuttable presumption is an inference which, in the absence of any controverting evidence, is to be made and accepted as an established fact (Evid. Code, § 600). The legislative history of subdivision (e) indicates that this statutory rebuttable presumption concerning joint tenancies was enacted to lessen the administrative burden which would be imposed upon the assessor if he had to ascertain the facts regarding the creation of every joint tenancy in his county.

In this instance, however, where the facts regarding the pre-March 1, 1975, transfer are known, the presumption is overcome and the facts themselves are controlling. Thus, Section 65(e) and its concomitant rule, Rule 462(c)(3), are inapplicable to the question presented here.

When the facts you have presented are examined, they indicate that neither mother nor daughter can be considered to be an "original transferor," within the definition of Section 65(b). The property was purchased in 1942 by the mother and daughter as joint tenants. They were transferees, not transferors, when the joint tenancy was created. No information has been presented to show that either joint tenant (the mother or daughter) acted as a transferor by transferring an interest or creating a joint tenancy in a third party while remaining on the deed as a joint tenant. Thus, the statutory definition provided by Section 65(b) of an "original transferor" as the creator or transferor of a joint tenancy interest in which the transferor after such creation or transfer is among the joint tenants has not been met.

Ms. Louise H. Renne
Ms. Robin Reitzes Manion

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The exclusions from the change in ownership provisions provided by Section 65(c) and 65(d) relate by their own definitions only to situations described in Section 65(b); that is, transfers involving "original transferor." Therefore, they cannot be used to exclude the transfer in question. Since no exclusionary provision is applicable, the basic principle set forth in Section 65(a) that the creation, transfer or termination of a joint tenancy is a change in ownership governs. The transfer you describe must, therefore, be treated as a change in ownership of the decedent's 50 percent interest in the property.

Very truly yours,

Barbara G. Elbrecht
Tax Counsel

BGE/rz

cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Verne Walton

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